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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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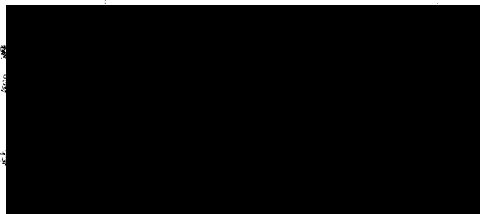
JAN 31 2005

FILE: [Redacted] Office: LOS ANGELES, CALIFORNIA Date:

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

[Handwritten signature of Robert P. Wiemann]

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Israel who was found to be inadmissible to the United States (U.S.) under § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation. The record reflects that on March 4, 1990, the applicant entered the United States by falsely claiming to be a Canadian citizen, using documents in another individual's name. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i). In the present case, in order for the applicant to qualify for a § 212(i) waiver of inadmissibility, he must demonstrate extreme hardship to his U.S. citizen spouse. The district director concluded that the applicant failed to establish that extreme hardship would be imposed on his wife and denied the application accordingly.

On appeal, counsel states that the Immigration and Naturalization Service, now known as Citizenship and Immigration Services (CIS), abused its discretion by failing to thoroughly analyze the facts and evidence in the case and in misapplying the law regarding extreme hardship. Counsel asserts that if the applicant is removed, he will lose his business, causing financial hardship and emotional distress to his wife. Counsel also contends that if the applicant's wife chooses to relocate to Israel with the applicant, she may not be able to secure employment as a school psychologist.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Referring to numerous court decisions that interpreted the term "extreme hardship" for waiver and suspension of deportation purposes, in *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (Board) outlined the following factors it deemed relevant to determining extreme hardship to a qualifying relative in § 212(i) waiver cases:

The factors deemed relevant in determining extreme hardship to a qualifying relative include, but are not limited to, the following: the presence of lawful permanent resident or United States citizen family ties to this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties to such countries; the financial impact of departure from this country; and finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Cervantes-Gonzalez at 565-566. (Citations omitted).

In the present case, the record does not contain evidence that the applicant or his wife have any physical or mental health problems. As of the date of appeal, January 21, 2000, they did not have any children, and the applicant's wife was pursuing graduate studies in the field of psychology. The record reflects that the applicant's husband owned and operated a marble and tile contracting business at the time of the appeal.

The record contains no evidence regarding employment or business conditions in Israel; thus, the AAO is unable to conclude that the applicant and his wife would be unable to re-establish themselves in that country. The documentation on the record also does not demonstrate that, should the applicant's wife choose to remain in the United States, she would be unable to make any emotional and financial adjustments needed to adapt to a new household situation.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. It is also noted that the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.


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In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.